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April 4, 2008

Ms. Jennifer J. Johnson
Secretary
Board of Governors of Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

Re: Docket No. R-1305 – Proposed rule; Request for Public Comment – Regulation Z Amendments

Dear Ms. Johnson,

Flagstar Bank, FSB (Flagstar) appreciates the opportunity to comment on this proposed rule. Flagstar is a subsidiary of Flagstar Bancorp, a bank holding company headquartered in Troy, Michigan, with more than \$15 billion in assets. As of December 31, 2007, Flagstar operated 164 banking centers in Michigan, Indiana, and Georgia and 143 home loan centers in 27 states. Flagstar originates home loans nationwide, and, as one of the nation's leading originators of residential mortgages, originated over \$ 25 billion in residential mortgages in 2007.

Given the havoc that certain residential mortgages have had on borrowers, lenders and the economy in the last year, Flagstar certainly understands the need to make regulatory changes at this time. While we are in general agreement with the proposed changes, there are a few sections that should, in our view, be modified. In that regard, we offer the following comments and suggestions:

I. Definition of Higher Priced Loans

We believe that the creation of a category of loans referenced as "higher-priced mortgage loans" is an appropriate way to address many of the concerns that have been raised by the Board. Our concern, however, is that the definition of "higher-priced mortgage loans" is too broad. In our opinion, because there are too many economic factors that affect Treasury rates differently than they affect mortgage rates, use of Treasury Bonds as an index is not ideal. Rather, we believe that the definition of "higher-priced mortgage loans" should be based on the Freddie Mac Conventional Mortgage Home Price Index (CMHPI) or a Mortgage Backed Securities Index, such as the FNCR3030 Index.

Alternatively, if Treasury Bonds are used as an index, we suggest using a wider spread (such as 400 basis points) as the current proposed formula may pick up far more loans than we believe to be intended under certain market conditions. For example, during the three-month period, beginning on November 1, 2007 and ending on January 31, 2008, virtually all of Flagstar's originations were either FHA loans or loans that qualified for Fannie Mae or Freddie Mac pools. Yet, during that same time period, 22.5 percent of the first lien residential mortgage loans that Flagstar originated would have been included in the proposed definition of "higher-priced mortgage loans." We do not believe that the Board intended to include prime agency or competitively priced FHA loans in the definition of "higher-priced mortgage loans," but rather that the liquidity crisis that has crippled the capital markets has caused a "rush to quality" which has had the effect of driving down the yield on Treasury Bonds relative to other assets, including mortgages.

II. Suitability Standard

Flagstar is opposed to the creation of a broad suitability standard in the context of mortgage lending, believing that such a standard would, by its very nature, be too subjective and poor public policy. Mortgage loan originators



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are not trained as financial planners and are not provided with information about an applicant's complete financial situation, which would be necessary in order to make a determination as to the suitability of a particular mortgage loan. Borrowing against one's house is typically the least expensive cost of funds for most Americans, and there are a number of prudent financial reasons, such as maximizing employer matched 401(k) contributions, reducing higher interest debt or paying medical bills or other unexpected bills, that may arise and which serve as ample justification for a borrower's desire to borrow against one's home. We believe that loan originators or lenders are neither properly trained nor well positioned to deny borrowers the right to make such financial decisions for themselves.

Rather, by requiring that a borrower qualify for an adjustable rate mortgage on the basis of the fully amortized payment, including a reasonable estimate for tax and insurance payments, we believe that the Board has effectively addressed the concerns, regarding a loan that is beyond the borrower's financial resources. In fact, Flagstar believes that the Interagency Guidance on Nontraditional Mortgage Products Risks and the Statement on Sub-prime Mortgage Lending, issued by the various banking regulators, which do require that an applicant be approved based on the amount of the monthly payment calculated on the fully amortized rate, have already addressed the suitability issue in large measure. By including similar language in Regulation Z, the Board has fairly addressed concerns that guidance is not necessarily implemented uniformly by all originators and does not provide borrowers with an opportunity for redress.

If the Board does include a suitability standard in the final rule, then Flagstar believes that it is of paramount importance that the regulation clearly set forth that class action lawsuits may not be brought pursuant to the regulation. By definition, suitability is unique to each borrower's personal situation, and therefore certification of a class action should not occur. However, there are no shortage of lawsuits clogging the courts with actions brought by a purported class in an effort to extort quick settlements from financial institutions. The cost of this type of litigation is borne by the public as a whole and is a poor redistribution of capital. We believe that the most efficient and cost effective way in which to address compliance concerns is through regulatory enforcement. To the extent that any private right of action is provided, we believe that it should be limited to a particular borrower, and not allow for class actions.

III. YSP Disclosure

Flagstar recommends that the Board provide additional clarification to ensure that the secondary marketing exemption for yield spread premium disclosure, which is addressed in RESPA, is equally applicable to the YSP provisions in this proposal. The proposal uses the term "bona fide warehouse line of credit," a term that is not defined in Regulation Z, RESPA or in the current proposal. We believe that the proposal should define this term and that a warehouse line of credit should be deemed to be "bona fide" if there is recourse to the borrower beyond the principal balance of the underlying mortgage loan.

Also, we believe that a general disclosure, explaining YSP and giving a range of the applicable YSP, would address the Board's concerns and would be less stringent than requiring the disclosure of the exact amount of YSP at the time of application. This requirement is too stringent because, until a loan is locked, a broker will not know the amount, if any, of the YSP that will be received. In the alternative, permitting the broker to disclose a range for the amount of YSP or creating a tolerance, such as the finance charge tolerance already existing in Regulation Z, would allow the broker to provide YSP information to the applicant while also enabling the broker to adjust the YSP, depending upon the rate at which the loan is locked.



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Again, we appreciate the opportunity to comment on this proposed rule. If our letter raises any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Michele K. Spear". The signature is written in a cursive, flowing style.

Michele K. Spear
Chief Compliance Officer